



MONTANA DEPARTMENT OF CORRECTIONS ADMINISTRATIVE POLICIES

Policy No.: DOC 1.5.13	Subject: DNA TESTING/COLLECTION OF BIOLOGICAL SAMPLES	
Chapter 1: ADMINISTRATION AND MANAGEMENT	Page 1 of 4	
Section 5: Case Records and Good Time	Revision Date: Jan. 24, 2000; July 18, 2005	
Signature: /s/ Bill Slaughter, Director	Effective Date: Nov. 8, 1999	

I. POLICY:

It is the policy of the Department of Corrections, in accordance with state law, to collect biological samples in the form of buccal swabs from felony offenders committed to facilities or supervised in programs administered by the Department.

II. IMPLEMENTATION:

This policy was revised in July 2005 to address changes enacted by the 2005 Montana Legislature that expanded the offender class required to submit biological samples. This policy will be implemented on the revision date.

III. AUTHORITY:

44-5-103, 44-6-101	<i>Definitions</i>
44-6-102, MCA	<i>Establishment of DNA Identification Index</i>
44-6-103, MCA	<i>Collection of Samples and Maintenance of Data</i>
44-6-107, MCA	<i>Expungement of DNA Records</i>
44-6-108, MCA	<i>Confidentiality of Records of DNA Testing</i>
46-18-202, MCA	<i>Additional Restrictions on Sentence</i>
46-23-215, MCA	<i>Conditions of Parole</i>
46-23-205, MCA	<i>Definitions</i>
MSP Policy 3.4.1	<i>Inmate Discipline</i>
P&P 140-1	<i>Probation and Parole Adult Offender Discipline</i>

IV. DEFINITIONS:

Facilities Administered by the Department - For purposes of this policy, includes Montana State Prison, Montana Women's Prison, Montana Correctional Enterprises, Treasure State Correctional Training Center, Pine Hills Youth Correctional Facility, Riverside Youth Correctional Facility, prerelease centers, youth transition centers, and the private and regional facilities contracted to the Department of Corrections.

Facility Administrator – The official, regardless of local title (administrator, warden, superintendent), ultimately responsible for the facility or program operation and management.

Biological Sample – The removal of cheek cells by using a buccal swab of a type authorized by the Department or a vial or other container of blood.

Buccal Swab – The removal of cheek cells by means of a sterile swab.

DNA – Deoxyribonucleic Acid.

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DNA Record – DNA identification information stored in the DNA identification index for purposes of establishing identification in connection with law enforcement investigations or supporting statistical interpretation of the results of DNA analysis. The DNA record is considered the objective form of the results of a DNA analysis, such as the numerical representation of DNA fragment lengths, autoradiographs and the digital image of autoradiographs, and discrete allele assignment numbers.

DNA Testing – DNA analysis of materials derived from the human body for the purposes of identification.

Felony Offense – Any offense under the Montana Code Annotated for which the maximum potential sentence under statute is death, life, or imprisonment in a state prison for a term exceeding one year.

Sexual Offense – The offenses contained in the definition of that term in *46-23-502, MCA*.

Violent Offense – The offenses contained in the definition of that term in *46-23-502, MCA*.

V. PROCEDURES:

A. Applicability

1. Sexual or violent offenders (adult and youth) sentenced to the custody or under the supervision of the Department are required to submit biological samples if convicted of a sexual or violent offense as defined in Section IV of this policy, on or after October 1, 1995.
2. Adult offenders sentenced to the custody or under the supervision of the Department between October 1, 2001 and April 6, 2005 are required to submit biological samples if convicted of a felony offense under Title 45, Chapter 5; Title 45, Chapter 9; or Section 45-6-204, MCA
3. Adult offenders sentenced to the custody or under the supervision of the Department are required to submit biological samples if convicted of any felony offense, as defined in Section IV of this policy, on or after April 7, 2005.

B. Offenders Required to Provide Biological Samples

1. Adult offenders are required to provide biological samples for DNA testing if:
 - a) the court order convicts the offender of a felony offense;
 - b) the court order revokes a probationary sentence of an offender previously convicted of a felony offense; or
 - c) the court order requires the offender provide a biological sample under *46-18-202, MCA*.
2. Youth offenders are required to provide biological samples for DNA testing if the court adjudicates the youth of a violent or sexual offense.

C. Offenders Incarcerated in Department Facilities

1. Admission of an Offender Subject to Sampling to a Secure Facility:

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- a) upon admission of an offender to a Department facility, the reception unit or designated facility staff will obtain any required biological sample using the collection procedure outlined in this policy and a Buccal Swab Collection Kit provided by the Department of Justice.
- 2. Discharge of an Offender Subject to Sampling From a Secure Facility:
 - a) prior to discharging an offender subject to sampling, the Institutional Probation and Parole Officer (IPPO), or staff designated by the facility administrator, will determine whether a biological sample has been taken. If not, staff must ensure a sample in the form of a buccal swab is obtained before the offender discharges.
- 3. Procedures for Obtaining Biological Samples:
 - a) staff will request that the offender provide the buccal swab sample. If the offender is cooperative, the staff member will proceed with obtaining the buccal swab according to Section F below;
 - b) if the offender refuses, the staff member will order the offender to provide the sample. The offender may not disobey the order on the grounds that he or she may refuse medical treatment, as this is not a medical treatment procedure;
 - c) if the offender refuses to obey this direct order, staff will prepare a severe disciplinary infraction report on the offender in accordance with *MSP Policy 3.4.1, Inmate Discipline*, or a major rule violation or similar report in other facilities, and submit the report for processing;
 - d) if the refusing adult offender is discharging to a probationary sentence, an IPPO must immediately begin procedures to have the suspended or deferred sentence revoked pursuant to *44-6-103(4), MCA*; or
 - e) if the refusing offender is discharging without further DOC supervision, an IPPO or case manager will immediately refer the case to Department legal staff who will pursue legal remedies.

D. Offenders on Probation, Parole or Intensive Supervision Program (ISP)

- 1. Offenders subject to sampling that are on probationary or parole status must provide a biological sample to the sheriff, or designee, in the sentencing jurisdiction; or the sheriff, or designee, in the jurisdiction in which the offender resides.
- 2. Upon signing the rules of probation, the supervising officer will notify the offender in writing of his or her duty to provide a biological sample. This written directive will advise the offender to provide a biological sample within ten (10) days to the sheriff's office in the sentencing jurisdiction or to the sheriff's office in the jurisdiction in which the offender resides.
- 3. If the offender fails to provide a biological sample or proof of compliance within ten (10) days, the supervising officer will immediately begin procedures to revoke the offender's probation or parole status pursuant to *44-6-103(5), MCA*, or conduct an Adult Disciplinary Hearing with an offender on ISP.

E. Offenders in Prerelease Centers

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1. Upon admission of an offender subject to sampling into a prerelease center, the prerelease staff will determine whether a biological sample has been taken. If not, staff must obtain a sample in the form of a buccal swab using the following procedures:
 - a) staff will request that the offender provide the buccal swab sample. If the offender is cooperative, the staff member will proceed with obtaining the buccal swab according to Section F below;
 - b) if the offender refuses, staff will order the offender to provide the sample. The offender may not disobey the order on the grounds that he or she may refuse medical treatment, as this is not a medical treatment procedure; and
 - c) if the offender refuses to provide a sample, the staff member will prepare a disciplinary write-up and will conduct an Adult Disciplinary Hearing pursuant to *P&P 140-1*.

F. Collection Procedures

1. Staff will collect a clear and clean thumbprint from the offender on the card provided in the Buccal Swab Collection Kit.
2. Staff will complete all information required on the information card and will enter the offender's DOC I.D. number and the offender's SID (State Identification) number. If an offender's SID number is unavailable, staff may use the offender's Social Security number.
3. Staff will collect the buccal swab sample.
4. Staff will place the offender's thumbprint, the offender's information card and the offender's buccal swab sample in the envelope provided for shipping to the Montana DNA Laboratory.
5. Staff will mark the envelope for "certified mail" and mail it to the Montana DNA Laboratory, Forensic Science Division. Alternative delivery methods such a bulk package mailing and personal delivery may be used as long as the proper chain of evidence is observed.
6. Staff will maintain records in the offender's record file that the biological sample was obtained, along with the date and name of the person taking the sample.

G. Confidential Criminal Justice Information

DNA records are to be considered confidential criminal justice information subject to the dissemination provisions of Title 44, Chapter 5, Montana Code Annotated.

VI. CLOSING:

Questions concerning this policy should be directed to the immediate supervisor.